TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 790.

BENJAMIN R. THOMAS AND BETTIE B. WILLIS, APPELLANTS,

vs.

EDMOND WOOLDRIDGE, SAMUEL L. WOOLDRIDGE, THOMAS C. CATCHINGS, ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF MISSISSIPPI.

FILED FEBRUARY 9, 1875.

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upon the written obligation of the said Edmond Wooldridge, for the sum of six thousand dollars.

4. That in the said suits writs of attachment and of garnishment were duly issued against the said Edmond Wooldridge and Samuel L. Wooldridge, as defendants, and your orators, as garnishees, in the one case, and against the said Edmond Wooldridge, as defendant, and your orators, as garnishees, in the other case.

5. That the said writs of attachment and garnishment were on the said 2nd day of June, 1874, duly served upon your orators in said county, commanding them to appear before the said Warren County circuit court on the return-day of said attachments, to answer, as garnishees of the said defendants Edmond Wooldridge and Samuel L. Wooldridge, in the one case, and the said defendant Edmond Wooldridge, in the other case. By means whereof, as your orators are advised, the said debt by them owing upon the said judgment was, in law, assigned to the said attaching-creditor Marion S. Hedrich, and your orators have become liable to make payment thereof to him, upon his prosecuting his said attachment-suits, or either of them, with success.

6. That on the 8th day of July, 1874, the marshal of said district, having in hand the execution issued upon said judgment of Edmond Wooldridge against your orators, applied to your orators to satisfy the same, and was thereupon informed by your orators of the garnishment of said debt in their hands, and requested to make return of said writ of execution accordingly. But the said marshal, under the advice of the said Messrs. Catchings & Ingersoll, who were the attorneys of the said Edmond Wooldridge in the obtaining of said judgment, insisting upon his right to collect so much of said judgment as would be sufficient to satisfy the costs of court and the fees of counsel for obtaining said judgment, notwithstanding said garnishment; and the said attaching creditor Marion S. Hedrich, together with your orators, recognizing the superiority of the claim for counsel-fees and court-costs, an agreement was thereupon made between the said Marion S. Hedrick, the said Edmond and S. L. Wooldridge, and your orators, under which your orators paid to the marshal upon said execution the sum of one thousand and seventy-seven dollars in satisfaction and discharge of said counsel-fees and court-costs, upon a stipulation in said agreement contained that your orators should not be again held accountable therefor either to the said Marion S. Hedrick or the said Edmond or Saml. L. Wooldridge, and said execution was thereupon returned by the marshal to said United States circuit court.

7. That your orators thereupon filed in said circuit court of Warren County their answers in said attachment-suits, acknowledging themselves indebted upon the said judgment in favor of said Edmond Wooldridge in the sum of three thousand seven hundred and seventy-three and $\frac{29}{100}$ dollars.

8. That the said writs of attachment, returnable to the circuit court of Warren County, were duly and personally served upon the said Edmond Wooldridge upon the day they were issued, and publication is being made against said Samuel Wooldridge, as a non-resident of said State of Mississippi, and they both have, otherwise, actual notice of the pendency of said attachment-suits and of the fact that the said judgment-debt has been thereon garnisheed and attached in the hands of your orators, as have also the said Catchings & Ingersoll, as attorneys of the said Edmond and Samuel L. Wooldridge, and the said J. L. Lake, marshal.

9. Notwithstanding the premises, the said Catchings & Ingersoll, as the attorneys of the said judgment-plaintiff, Edmond Wooldridge, have now caused another execution to be issued upon the said judgment and placed in the hands of the said J. L. Lake, marshal of said district, who, having applied to your orators to satisfy the same and been refused by reason of the matters above set forth, now threatens to seize and sell the property of your orators to satisfy said execution, and will seize and sell the same accordingly unless restrained by injunction.

10. Your orators are advised that this proceeding on the part of the said judgment-creditor, his counsel, and the marshal aforesaid, is against equity and good conscience, is in fraud of the rights of the said attaching creditor acquired in the said Warren County circuit court, and in disrespect to the jurisdiction of said court; that it is oppressive, injurious, and illegal as against your orators, who cannot be required to pay said debt to said judgment-creditor so long as they are liable to be adjudged by the said circuit court of Warren County to pay the same to the said attaching creditor in the said suits now depending in said court, and that this honorable court, in the exercise of its equitable jurisdiction, as well as out of regard for the comity due to said circuit court of Warren County, which has acquired jurisdiction to de-
7 termine the question as to whom the said debt now belongs, will enjoin and restrain the said Edmond and Samuel L. Wooldridge, their agents and attorneys, and the said United States marshal, himself and his deputies, from taking any further proceedings for the enforcement of said judgment against your orators until the said circuit court of Warren County shall have determined and adjudged whether or not your orators shall pay the same to the said Marion S. Hedrich, the said attaching creditor, and this court shall have made its order accordingly.

11. Your orators further state that they are perfectly solvent; that they own upwards of one hundred thousand dollars of real estate in said county of Warren on which said judgment is a lien, and the first lien, and owe no debts of any consequence. That the security for said judgment cannot be in any manner jeopardized by the delay incident to the determination of the said attachment-suits in the circuit court of Warren County. That under the laws of Mississippi, your orators occupy the position of trustees of the debt owing by them, and are bound to protect the same, and that the said Edmond Wooldridge, having full knowledge of all the facts, as above set forth, can only be actuated in his attempt now to enforce said judgment against your orators by a desire to defeat the rights of the said Marion S. Hedrick in the premises, or needlessly to harrass and oppress your orators.

8 PRAYER.—To the end, therefore, that your orators may have relief in the premises, and inasmuch as they are without adequate relief save in a court of equity, they pray that the said Edmond Wooldridge and Samuel Wooldridge, the said Thomas C. Catchings and William K. Ingersoll, and the said J. L. Lake, marshall, may be made defendants to this bill, by proper process, and that the said Edmond Wooldridge and Samuel Wooldridge as the real parties in interest may be required to answer the same, and that a writ of injunction may immediately issue from this honorable court, enjoining and commanding the said Edmond Wooldridge and Samuel L. Wooldridge, and the said Thomas C. Catchings and William K. Ingersoll, as their attorneys, and the said J. L. Lake, marshall, to desist from all further proceedings to enforce the collection of the said judgment against your orators, by virtue of the said execution now in the hands of said marshal, or otherwise until such time as your orators shall be discharged from their

liability as garnishees in said attachment-suits in said circuit court of Warren County, or this honorable court shall make an order to the contrary. And if your orators shall be adjudged to pay the said debt to the said Marion S. Hedrich, under said garnishment proceedings, then your orators pray that said injunction be made perpetual or for general relief.

EDWARD S. BUTTS.

GEO. K. BIRCHETT & BUCK & CLARK,
Solrs. for Compts.

9 UNITED STATES OF AMERICA,
Southern District of Mississippi, County of Warren, ss:

This day personally appeared before me, the undersigned, a commissioner of the United States circuit court, in and for said district, Edward S. Butts, who, upon oath, says that he is agent of Bettie B. Willis, and as such agent he deposes and says that the matters and things in the foregoing bill set forth as upon the knowledge of the complainants are true; and that those set forth as upon their information and belief he believes to be true.

EDWARD S. BUTTS.

Sworn to and subscribed before me this 13th day of August, A. D. 1874, at my office, in said county of Warren.

[SEAL.] LAZ. LINDSEY,
U. S. Comr.

Upon which said bill was a fiat endorsed, which is in words and figures following, viz:

To the clerk of said court:

You will issue the writ of injunction as prayed for, upon complainants executing bond with two or more good and sufficient sureties, to be approved by Laz. Lindsey, commissioner, in the sum of four thousand dollars, payable to the defendants, and conditioned for the payment
10 of such sum as the court may decree, against complainants, by reason of the wrongful suing and said writ of injunction; said writ to be returned as in other process of like nature.

This August 19th, 1874.

R. A. HILL, *Judge.*

And on the same day and year said complainants filed their bond for injunction, in words and figures as follows:

Know all men by these presents, that we, Benjamin R. Thomas and Bettie B. Willis, copartners, doing business under the firm-name and style of the Vicksburg Bank, as principals, and William Muller and David Mayer, as sureties, are held and firmly bound unto Edmond Wooldridge and Samuel L. Wooldridge, of Kentucky, Thomas C. Catchings and William K. Ingersoll, of Mississippi, and J. L. Lake, United States marshal of the southern district of Mississippi, in the penal sum of four thousand dollars, for payment of which, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents, signed by us and sealed with our seals this day of August, A. D. 1874.

The condition of this obligation is such that whereas the above-named Benjamin R. Thomas and Bettie B. Willis, copartners, &c., have

exhibited in the circuit court of the United States, in and for the
11 southern district of Mississippi, in equity, their certain bill of complaint, praying that a writ of injunction be issued out of said court to enjoin and restrain the above-named Edmond Wooldridge, Samuel L. Wooldridge, Thomas C. Catchings, William K. Ingersoll, and J. L. Lake from all further proceedings to enforce the collection of a certain judgment for the sum of four thousand and eight hundred dollars and twenty-nine cents, obtained by the said Edmond Wooldridge against the said Benjamin R. Thomas and Bettie B. Willis, copartners, &c., in the said circuit court of the United States on the 27th day of May, 1874, and have obtained the fiat of the honorable R. A. Hill, one of the judges of said court, for the issuance of the said injunction upon the giving of this security. Now, therefore, if the above-bounden Benjamin R. Thomas and Bettie B. Willis, copartners, &c., shall well and truly pay such sum as the said court may decree against them by reason of the wrongful suing out of the said writ of injunction, then this obligation shall be void; otherwise the same shall be and remain in full force and effect.

VICKSBURG BANK, [SEAL.]
By E. S. BUTTS, *Cashier.*
WILLIAM MULLER. [SEAL.]
DAVID MAYER. [SEAL.]

12 I approve the above-named sureties as good and sufficient, at Vicksburg this August 28th, 1874.

[SEAL.] LAZ. LINDSEY,
U. S. Commr.

Also the following bond for costs, to wit:

Know all men by these presents that we, Benjamin R. Thomas and Bettie B. Willis, copartners using the firm-name and style of "the Vicksburg Bank," as principals, and T. R. Roach, as security, are held and firmly bound unto the officers of the circuit court of the United States, in and for the southern district of Mississippi, in the penal sum of two hundred dollars, for the payment of which we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents, signed by us and sealed with our seals, this 31st day of August, 1874.

The condition of this obligation is, that whereas the above-named Benjamin R. Thomas and Bettie B. Willis, as copartners as aforesaid, have filed in the said circuit court of the United States their certain bill in equity against Edmond Wooldridge, Samuel L. Wooldridge, Thomas C. Catchings, William K. Ingersoll, and J. L. Lake, marshal of said court, praying to be relieved touching certain matters in said bill contained: Now, if the said plaintiffs shall pay all costs which shall
13 be incurred by them in said suit, and shall abide the judgment of the court in that behalf, then this obligation shall be void; otherwise the same shall be and remain in full force.

VICKSBURG BANK,
By E. S. BUTTS, [SEAL.]
Cashier Vicksburg Bank.
T. R. ROACH. [SEAL.]

Security good.

LAZ. LINDSEY,
U. S. Commr.

Also the following appearance by defendants, viz:

In the circuit court of the United States, southern district of Mississippi.

B. R. THOMAS ET AL.
vs.
E. WOOLDRIDGE ET AL. } Chancery.

And now come T. C. Catchings and W. K. Ingersoll, two of the defendants to said bill, and enter their appearance herein, waiving process, &c., and agreeing to file their answers herein in due course. Injunction-writ also waived.

T. C. CATCHINGS,
W. K. INGERSOLL,
Defts.

AUG. 28th, 1874.

14 And upon the filing of said bonds there were issued out of said court the following writs of subpœna and injunction, which, with the returns thereon, are as follows:

UNITED STATES OF AMERICA,
Southern District of Mississippi, sc:

The President of the United States, to the sheriff of Hinds County, Mississippi, greeting:

You are hereby commanded, without delay, to summon J. L. Lake, marshal of the United States for the southern district of Mississippi, defendant, who is a citizen of the State of Mississippi, to appear before the circuit court of the United States for the southern district of Mississippi, at the city of Jackson, at rules, to be holden in the clerk's office, of said court, on the first Monday in October next, to answer a bill in equity exhibited against him and others by Benjamin R. Thomas and Bettie R. Willis, copartners using the firm-name and style of the Vicksburg Bank, complainants, who are residents of the county of Warren, in said district, and citizens of the State of Mississippi, and unless he shall enter his appearance therein, in the clerk's office aforesaid, on or before the time specified above, the said bill will be taken for confessed. And have then there this writ, and how you have executed the same.

Witness the honorable Morrison R. Waite, Chief-Justice of the
15 Supreme Court of the United States, and the seal of our said circuit court, this 1st day of September, A. D. 1874, and in the 98th year of the Independence of the United States of America.

[SEAL.] GEO. T. SWANN, *Clerk.*

Rec. 1st Sept., 1874.

W. H. HARNEY, *Shff.*,
By WM. H. TAYLOR, *D. Shff.*

Executed personally on the within named J. L. Lake, jr., U. S. marshal so. dist. Mississippi, by exhibiting and stating contents of this process, also by delivering to him a true copy thereof this 3rd day of September, 1874.

WM. H. HARNEY, *Sheriff*,
By W. H. TAYLOR, *D. S.*

Shff.'s fees, $3.00.

UNITED STATES OF AMERICA,
Southern District of Mississippi, sc:

The President of the United States to J. L. Lake, jr., esq., U. S. marshal for the southern district of Mississippi, greeting:

Whereas Benjamin R. Thomas and Bettie B. Willis, copartners, using

the firm-name and style of the Vicksburg Bank, citizens of the State of Mississippi, have exhibited in our circuit court of the United
16 States for said district their certain original bill of complaint against you and others, praying injunction and relief touching the matters therein set forth and stated, and have obtained from the Hon. R. A. Hill, one of the judges of our said court, a fiat for such injunction, as prayed for, upon the execution of a certain bond, which is filed:

Therefore, pursuant to said order, we command you, forthwith, to cease and refrain from all further collecting or attempting to collect, by levy or otherwise, of or from the said Benjamin R. Thomas and Bettie B. Willis, copartners under the name of the Vicksburg Bank, all or any part of the monies mentioned in a certain fieri facias issued out of our said circuit court in a cause wherein E. Wooldridge is plaintiff and Benjamin R. Thomas and Bettie B. Willis are defendants, issued upon a judgment of our said circuit court rendered on the 27th day of May, A. D. 1874, for the sum of four thousand and two hundred dollars and 29 cents, with costs of suit, and now in your hands to be levied, and from any and all further proceedings under said judgment and fieri facias thereon until you shall receive the further order of our said circuit court thereupon; and herein you shall not fail, under penalty of five hundred dollars, and such further consequences as may fall thereon.

Witness the Hon. Morrison R. Waite, Chief-Justice of the Supreme Court of the United States, and seal of said circuit court hereto affixed, at Jackson, this 1st day of September, A. D. 1874.

[SEAL.] GEO. T. SWANN, *Clk.*

17 To the sheriff of Hinds County to execute and return.

GEO. T. SWANN, *Clk.*

Received 1st September, 1874.

W. H. HARNEY, *Sheriff*,
By W. H. TAYLOR, *D. S.*

Executed personally on the within-named J. L. Lake, jr., U. S. marshal so. dist. Miss., by exhibiting and stating contents of this process and by delivering to him a true copy thereof this 3rd day of September, 1874.

WM. H. HARNEY, *Shff.*
By W. H. TAYLOR, *D. Shff.*

Shff.'s fees, $3.00.

And afterwards, to wit, on the 14th day of November, A. D. 1874, the following answer was filed, together with notice of motion, which are in words and figures as follows, to wit:

To the hon. judges of the circuit court of the United States for the southern district of Mississippi:

The separate answer of Samuel L. Wooldridge to the bill of complaint of Benjamin R. Thomas and Bettie B. Willis, as copartners, under the firm-name and style of the Vicksburg Bank, against Edmond Wooldridge, this respondent, and others in the said circuit court.

This respondent, reserving the benefit of all exceptions to said bill of complaint, says the said complainants have not by their said bill made or stated such a case as this court can take jurisdiction of, as he
18 is advised and believes, and he therefore begs leave to rely upon the question of jurisdiction to the same extent as if it were specially pleaded.

Respondent further states that he is advised and believes, if this court can entertain said bill at all, it must be merely to suspend the execution of the judgment of this court mentioned in said bill of complaint and owned by this respondent, or to be enforced for his use until a controversy in the nature of an interpleader between him and Marion S. Hedrick, both non-residents of this State, one a citizen of Kentucky, and the other a citizen of Louisiana, shall be settled in one of the courts of this State. Complainants do not in their bill assert any demand or claim of any kind against him, except that he shall be restrained from executing his said judgment recovered in this court against them until said Hedrick, a citizen of Louisiana, can ascertain by the judgment of the circuit court of Warren County, in this State, whether respondent, a citizen of Kentucky, is indebted to said Hedrick or not; thus, substantially, asking this court to waive its right and duty of enforcing its own judgments, and permit a case after it has passed into judgment to be transferred to another and foreign jurisdiction, and that, too, without any good or substantial reason being assigned for it.

Respondent, further answering, says it is true that a judgment was rendered in this court on the 27th day of May, 1874, in favor
19 of Edmond Wooldridge against said complainants for the sum of four thousand and eight hundred dollars and twenty-nine cents and costs of suit.

Respondent further admits that he claims to be and is the owner of the said judgment by virtue of a written assignment thereof made to him on the 28th day of May, 1874, by the said Edmond Wooldridge, who is a brother of respondent, with full right and authority to use his, said Edmond Wooldridge's, name to enforce the execution of the same, and in all lawful proceedings to collect the money thereon.

And respondent further admits that before the rendition of said judgment there was an agreement between his brother and himself that the said suit should be prosecuted for his use. And the said complainants, or Edward S. Butts, who acts herein as their agent, or the agent of said Bettie B. Willis, were duly notified of said agreement and transfer or assignment. And respondent states that the said assignment was made in good faith and for a valuable consideration, and the whole proceeds of said judgment yet to be collected are due to him.

Respondent further admits that said Hedrick sued out attachments returnable to the circuit court of the said county of Warren against his said brother and himself and said complainants as garnishees, as stated in said bill of complaint.

But respondent denies that he owes the said Hedrick one cent
20 on said bill of exchange, or on any other account.

He admits he indorsed said bill of exchange for the accommodation of his said brother; that it was drawn on and accepted by Witherspoon, Moss & Co., a commercial firm in New Orleans, Louisiana; and respondent states that when said bill of exchange became due said acceptors were able to pay it, and continued to pay all their liabilities, as they matured and payment thereof demanded, for six or seven months after the bill indorsed by respondent as aforesaid became due; and respondent has been informed, and has no doubt of the fact, that said bill indorsed by him would have been paid by said acceptors at maturity, or at any time before said firm went to protest, which was about six or seven months thereafter, if it had been presented for payment and payment thereof demanded; but it was never protested, nor was payment thereof demanded, of said acceptors, until after they went to protest. The said indulgence was not given to said firm at the request of respond-

ent, or with his knowledge or consent, nor had he any notice that said bill of exchange had not been paid until some time after the failure of said firm, which was many months after the maturity of said bill of exchange. Respondent, therefore, repeats that he is no way liable to said Hedrick on said bill of exchange, in law or morals, nor is he indebted to him in any way whatever.

Respondent further states that he owns a large amount of unincumbered property, not less in value than one hundred thousand dol-
21 lars; that he is perfectly solvent, and there could not be the slightest difficulty in said Hedrick or any other person collecting, by legal process, many times the amount of said bill of exchange from him, if a judgment could be obtained against him, or any just and legal demands were held against him. Respondent insists that he has the right to be sued by said Hedrick, if at all, in his own State or county, and in the ordinary course, and there is not the slightest necessity of harrassing him by attachments in a foreign jurisdiction. But, if respondent is to be sued away from home at all, and his right to the proceeds of said judgment litigated, he is advised and believes it must be done in the court where the judgment was rendered.

Respondent is further advised and believes there is no legal reason or necessity to injoin the execution of said judgment to protect the said complainants from loss or injury by having to pay said judgment twice. If they see fit to exercise ordinary care and prudence, they can never be made to pay a cent to said Hedrick under said garnishment or attachment founded on said bill of exchange; and it could be no wrong or hardship to said Hedrick to compel him to sue respondent, if he thinks he has any just or legal demand against respondent, at respondent's own home, and where he has ample property to make good any judgment that can be recovered against him.

Respondent, therefore, prays your honors to dissolve the injunc-
22 tion herein, and dismiss said bill at the costs of complainants, and decree them to pay all damages sustained by respondent by the wrongful suing out or issuance of said injunction.

S. L. WOOLDRIDGE.

Sworn to and subscribed before me Nov. 12th, 1874.

[SEAL.] LAZ. LINDSAY,
Comr. for Kentucky.

Benjamin R. Thomas & Bettie B. Willis, or Messrs. Buck & Clark & George K. Birchett, their attorneys:

You will please take notice that on Thursday, the 26th day of November, 1874, I will, at Jackson, move the circuit court of the United States for the southern district of Mississippi, now in session in said town, to dissolve the injunction in the chancery case wherein you are complainants and Edmond Wooldridge, myself, and others, are defendants.

SAMUEL L. WOOLDRIDGE,
By T. A. & M. MARSHALL,
Attys.

We hereby acknowledge service of the above notice November 13th, 1874.

BUCK & CLARK,
For Complainants.
G. K. BIRCHETT,
For Complainants.

23 And on 26th day of November, 1874, the following affidavits were filed by defendants in this cause, viz:

Circuit court of the United States, southern district of Mississippi.—
In chancery.

B. R. THOMAS & BETTIE B. WILLIS
vs.
E. WOOLDRIDGE ET ALS.

To B. R. Thomas and Bettie B. Willis, copartners, under the name of the Vicksburg Bank, and to Buck & Clark, their attys. in above-styled cause:

Take notice, that on Wednesday morning next, the 25th day of November, A. D. 1874, at 10 o'clock a. m., we shall proceed at the office of, and before Laz. Lindsey, esq., commissioner of the circuit court of the United States in and for the district aforesaid, at Vicksburg, Miss., to take the affidavits of George M. Emack, Eugene Martin, and John S. Moss, on behalf of S. L. Wooldridge, one of the defendants in the above-styled cause, now pending in the said U. S. circuit court to be used upon the motion to dissolve the injunction therein on the hearing of said motion.

T. A. & M. MARSHALL,
Attys. for said S. L. Wooldridge.

24 We acknowledge service of the within notice by copy and personally, this 23rd day of November, A. D. 1874.

BUCK & CLARK,
For Plaintiff.

In the cir. court of the United States, southern district of Mississippi.—
In chancery.

B. R. THOMAS ET AL.
vs.
E. WOOLDRIDGE ET AL.

In pursuance to the annexed notice in the above-named cause, I caused to come before me at my office in Vicksburg, Miss., on Wednesday, Nov. 25, 1874, at 11 o'clock a. m., Mr. EUGENE MARTIN, one of witnesses named in said notice, who, being by me first duly sworn, deposes, in answer to inty's by Hon. Thos. A. Marshall, atty. for S. L. Wooldridge:

I am 25 years of age; a cotton broker in Vicksburg, Miss. I was acquainted with the firm of Witherspoon, Moss & Co., and with the members thereof, was a clerk for that firm from about its commencement until suspension, and am also acquainted with S. L. & E. Wooldridge. From March 14, 1871, and prior to that time and up to the suspension, the firm was composed of J. M. Witherspoon, Jno. S. Moss, George M. Emack, and P. Wooldridge. On the 4th day of July, 1871, said house was solvent and was paying all of its liabilities, and continued to pay up to March, 1872, when they suspended. E. Wooldridge was generally the
25 creditor of Witherspoon, Moss & Co., in pretty large sums; whether he was on the 14th day of July, 1871, I could not speak positively without reference to the books. I know that he was at that time a heavy endorser for the house. Saml. L. Wooldridge is a citizen of Woodford County, Kentucky; he is now, and has always been solvent, to my knowledge, from the day he formed the partnership of Blakemore, Wooldridge & Co., which, I believe, was in 1866. He withdrew from that house a man of means, and has been accumulating since, and is now considered a man of wealth.

On cross-examination by Geo. K. Birchett, esq., atto., witness states: What I know about Mr. Samuel L. Wooldridge being considered a man of wealth is what I know of his reputation and his credit in the banks, at home and abroad. I have now under control some $6,000 of 1st mortgage notes and moneys in his individual name. I know that in Kentucky he is in possession of property, real estate, valued at $75,000; whether in his name or not I can't say. I have heard that it was. I know also that he is in possession of lands in Southern Kentucky.

EUGENE MARTIN.

Sworn to and subscribed before me this 25th Novem., 1874.
[SEAL.] LAZ. LINDSEY,
U. S. Comm'r.

26 (Complainants, by solicitors, except to the taking of said depositions, because no legal notice was given to the complainants or their solicitors, and they had no notice whatever of the nature and subject-matter of the testimony sought to be introduced, and the same is irrelevant.)

LAZ. LINDSEY, *Com.*

THOS. C. CATCHINGS, esq., being called and duly sworn, in answer to questions by Hon. Thos. A. Marshall, atto., for Saml. L. Wooldridge, states:

I am an atto. at law in Vicksburg, Miss., and one of the witnesses to the paper hereto annexed, signed by E. Wooldridge, and marked "A" by the commissioner. I wrote that instrument, and it was executed by E. Wooldridge and witnessed by W. B. Pittman, esq., and myself on the day of its date.

In answer to cross-question by Geo. K. Birchett, esq., atto., witness states: I was employed as attorney for Mr. E. Wooldridge.

T. C. CATCHINGS.

Sworn to and subscribed before me this 25 Nov., 1874.
[SEAL.] LAZ. LINDSEY,
U. S. Comm'r.

27 Know all men by these presents that, for value received, I, the undersigned, Edmond Wooldridge, of Versailles, Woodford County, State of Kentucky, have this day and do hereby transfer, assign, and set over unto Samuel L. Wooldridge, of same county and State, all my right, title, and interest in and to a certain judgment this day rendered by the circuit court of the United States for the southern district of Mississippi in my favor against Benjamin R. Thomas and Bettie B. Willis, for the sum of ($4,800.29) four thousand eight hundred dollars and twenty-nine cents; and he may, by virtue hereof, take any legal steps or proceedings whatsoever, in my name, to enable him to secure the full collection of said judgment.

Witness my hand and seal, at Jackson, Mississippi, in said district, this 28th day of May, A. D. 1874.

E. WOOLDRIDGE. [SEAL.]

Witness—
W. B. PITTMAN.
T. C. CATCHINGS.
Exhibit A, in affidavit of T. C. Catchings.

LAZ LINDSEY, *Com'r.*

Afterwards, to wit, on the 14th day of November, 1874, the defendants filed their answer in said cause and moved the court to dissolve the said injunction; and such proceedings were thereupon
33 had as that afterwards, to wit, on the first day of December, 1874, the said circuit court made its order, or decree, whereby the said injunction, which was the only relief sought by the said bill, was totally dissolved and the merits of the said cause finally determined and disposed of.

Wherefore the said appellants appeal from the said order or decree of the said circuit court of the United States, and pray that the same, with the bill, answer, and all the pleadings, proofs, and proceedings in said cause, may be sent to the Supreme Court of the United States without delay, and that the said Supreme Court will proceed to hear the said cause anew, and that the said decree of said circuit court may be reversed and a decree made granting the relief prayed for in said bill, or such other decree as to the said Supreme Court may seem just.

Dated 28th day of December, 1874.

BUCK & CLARK,
Attorneys for Appellants.

34 In the circuit court of the United States for the southern district of Mississippi.

BENJAMIN R. THOMAS ET AL.
vs.
EDMOND WOOLDRIDGE ET AL. } In equity.

To the Hon. R. A. Hill, one of the judges of said court, and solely presiding, &c.:

The above-named complainants, Benjamin R. Thomas and Bettie B. Willis, herewith present their appeal from the order made by your honor on the 1st day of December, 1874, in the cause above stated, dissolving the injunction therein, and, tendering here the security required by the statute in such cases, pray that the said appeal may be allowed to operate to supersede the said order of dissolution and re-instate the said injunction. And will ever pray, &c.

BUCK & CLARK, & G. K. BIRCHETT,
Sols. for Comp'ts.

The within appeal granted, and allowed to supersede the order of dissolution and re-instate the injunction as prayed for within, this 28th day of December, 1874.

R. A. HILL, *Judge.*

35 In the Supreme Court of the United States.

BENJAMIN R. THOMAS ET AL.
vs.
E MOND WOOLDRIDGE ET AL. }

Know all men by these presents that we, Benjamin R. Thomas and Bettie B. Willis, as principals, and John A. Klein, as security, are held and firmly bound unto Edmond Wooldridge, Samuel L. Wooldridge, Thomas C. Catchings, William K. Ingersoll, and J. L. Lake, United States marshall southern district of Mississippi, in the sum of seven thousand dollars, to be paid to them, their executors or administrators;

to which payment we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents, signed by us, sealed with our seals, and dated this 28th day of December, 1874.

Whereas the above-named Benjamin R. Thomas and Bettie B. Willis have taken an appeal to the Supreme Court of the United States to reverse the order, or decree, rendered in the above-stated cause by the circuit court of the United States for the southern district of Mississippi on the 1st day of December, 1874, dissolving the injunction in said cause, which appeal is allowed to operate to supercede the said order of dissolution and re-instate the said injunction:

Now, therefore, the condition of this obligation is such that,
36 if the above-named Benjamin R. Thomas and Bettie B. Willis shall prosecute their said appeal with effect, and answer all costs and damages if they fail to make their plea good, then this obligation shall be void; otherwise the same shall remain in full force and effect.

B. R. THOMAS. [SEAL.]
BETTIE B. WILLIS. [SEAL.]
J. A. KLEIN. [SEAL.]

We, the above-named obligors, hereby authorize and empower Hon. R. A. Hill, judge, &c., to fill the blank in the foregoing bond with the sum which shall be fixed by him as the penalty thereof.

Witness our hands and seals this 23d December, 1874.

B. R. THOMAS. [SEAL.]
BETTIE B. WILLIS. [SEAL.]
J. A. KLEIN. [SEAL.]

The foregoing security taken and approved by me as good and sufficient this 28th day of December, 1874.

R. A. HILL, *Judge, &c.*

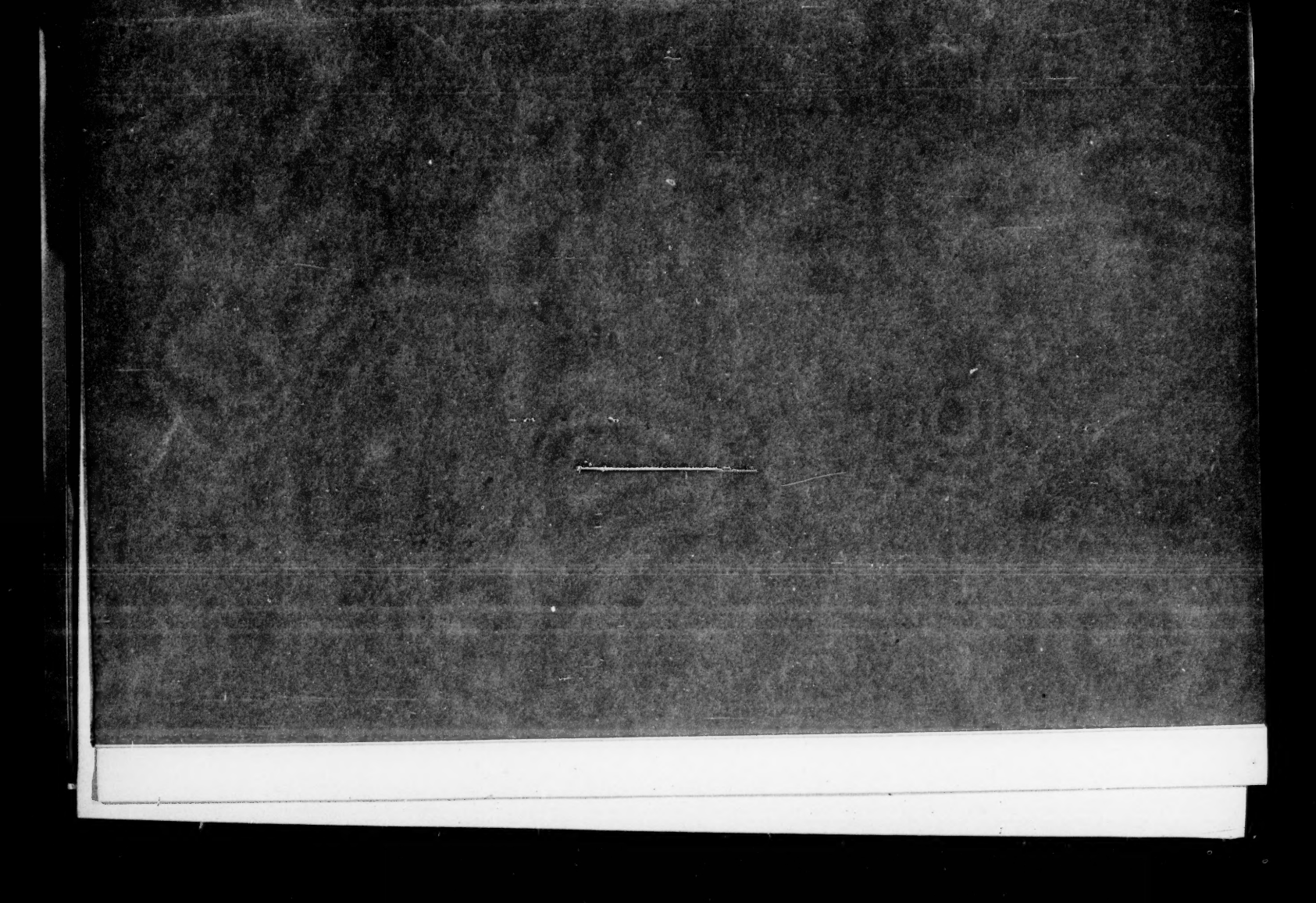
37 SOUTHERN DISTRICT OF MISSISSIPPI, *ss:*

I, George T. Swann, clerk of the circuit court of the United States for the southern district of Mississippi, hereby certify that the preceding and annexed 36 (thirty-six) pages contain a full, true, and complete transcript of the record of our said circuit court in the cause stated in the caption, lately pending and determined therein, as the same remains in said court, together with true copies of the petition of appeal and fiat and appeal-bond filed in said cause.

In testimony whereof I have hereunto set my hand and affixed the seal of said circuit court, at office in Jackson, in said district, this 29th day of January, A. D. 1875.

[SEAL.] GEO. T. SWANN, *Clk.*

(Indorsement on cover:) No. 790. Benjamin R. Thomas and Bettie B. Willis, appellants, vs. Edmond Wooldridge, Samuel L. Wooldridge, Thos. C. Catchings, et al. S. Mississippi, C. C. U. S. Filed 9th February, 1875.



Supreme Court of the United States.

OCTOBER TERM, 1874.

No. 790.

BENJAMIN R. THOMAS AND BETTIE B. WILLIS
APPELLANTS,

vs.

EDMOND WOOLDRIDGE AND SAMUEL L. WOOLDRIDGE, ET AL., APPELLEES.

Appeal from the Circuit Court, Southern Dist. of Mississippi.

MOTION TO DISMISS BY APPELLEES, STATEMENT, MOTION, AND BRIEF OF APPELLEES,

BY

JOSEPH CASEY, *Of Counsel.*

Judd & Detweiler, Printers.

Supreme Court of the United States.

OCTOBER TERM, 1874.

No. 790.

BENJAMIN R. THOMAS AND BETTIE B. WILLIS
APPELLANTS,

vs.

EDMOND WOOLDRIDGE AND SAMUFL L. WOOLDRIDGE, ET AL., APPELLEES.

Appeal from the Circuit Court, Southern Dist. of Mississippi.

STATEMENT.

On the 27th May, 1874, Edmond Wooldridge recovered in said circuit court a judgment against Thomas and Willis for the sum of $4,800.29 and costs, &c. The debt for which this judgment was recovered had been previously assigned and transferred by the plaintiff, Edmond Wooldridge, for a full and valuable consideration, to his brother, Samuel L. Wooldridge, and the suit was prosecuted in the name of Edmond, by his consent and authority, for the use of Samuel. On the 2d June, 1874, one Marion S. Hedrich, of New Orleans, Louisiana, brought two attachment suits in the circuit court of the State of Mississippi for the county of Warren—one against Edmond Wooldridge and Samuel L. Wooldridge, jointly, for the sum of $6.875, founded upon a

bill of exchange drawn by Edmond, and endorsed by Samuel L.; the other suit was against Edmond Wooldridge only, founded upon a written obligation for the sum of $6,000, and writs of attachment and garnishment were served upon Thomas and Willis.

An execution was issued on the judgment in the circuit court of the United States. Thomas and Willis paid on the same the sum of $1,077, to satisfy costs and counsel fees in the case, and the marshal returned the *fi. fa.*

Thomas and Willis filed their answers in the attachment suits, in the State court, and admitted their indebtedness to Edmond Wooldridge in the sum of $3,773.29 on the judgment aforesaid.

The attorneys for Wooldridge issued an *alias fieri facias* for the residue of the judgment from the United States circuit court.

Thereupon, Thomas and Willis filed this bill, alleging in full detail the facts above stated, and pray the court to grant an injunction against all further proceedings on said judgment and execution, until the appellants should be discharged from the attachment proceedings in the State court, or the further order of the court, and for general relief.

Upon this bill the court, on the 19th August, 1874, granted an injunction as prayed for. (Record, p. 4.)

On the 14th November, 1874, Samuel L. Wooldridge filed his answer to this bill of complaint, and prayed the court to dissolve the injunction and dismiss the bill at the cost of complainants. A number of depositions were taken. (Record, p. 9.)

And on hearing, December 1st, 1874, the injunction was dissolved, but the bill was not dismissed.

An appeal to this court was prayed and allowed on the 28th December, 1874. (Record, p. 14.)

Same day the following order was made:

"The within appeal granted and allowed to supersede

the order of dissolution, and reinstate the injunction as prayed for within, this 28th day of December, 1874."

The Record, after entry of the appeal, was brought up by the appellee, Wooldridge, and filed in this court, February 9, 1875, and this motion is made on his behalf.

Motion.

In the Supreme Court of the United States. In Equity.

BENJAMIN R. THOMAS AND BETTIE B. WILLIS, Appellants, *vs.* SAMUEL L. WOOLDRIDGE AND EDMOND WOOLDRIDGE, Appellees.	No. 790, Oct. Term, 1874. Oct. Term, 1875.

Appeal from the Circuit Court for the Southern District of Mississippi.

Motion by appellees to dismiss the appeal.

Now come the appellees, by Joseph Casey and Thomas A. Marshall, their counsel, and move the court to dismiss the appeal entered in this case.

And they show for cause of dismissal, that no such final order, decree, or judgment was made or rendered in the said cause by the said circuit court as is the subject of an appeal to or review by this court.

T. A. MARSHALL,
JOS. CASEY,
Counsel for Appellees.

Notice.

In the Supreme Court of the United States. In Equity.

BENJAMIN R. THOMAS AND BETTIE B. WILLIS, Appellants, *vs.* SAMUEL L. WOOLDRIDGE AND EDMOND WOOLDRIDGE.	No. —, Oct. T., 1875.

Appeal from the Circuit Court for the Southern district of Mississippi.

Motion by appellees to dismiss the appeal.

To Messrs. BUCK & CLARK and GEORGE K. BIRCHETT,
Attorneys for Appellants:

Please take notice that the above-named motion will be called for hearing on Monday, the 22d day of March next, before said court, at its room in the Capitol, at the city of Washington, D. C., at 12 m. on said day, or so soon thereafter as counsel can be heard.

A copy of said motion, as made by counsel for appellees before said court, is hereto attached.

Very respectfully, yours,

T. A. MARSHALL
AND JOS. CASEY,
Counsel for Appellees.

February 23, 1875.

Service.

Received Feb. 24th, A. D. 1875—J. L. Lake, Jr., U. S. Marshal.

By E. PLATT, *Dep. U. S. M.*

Executed this the 25th day of February, A. D. 1875, by delivering in person a true copy of within motion and notice to R. S. Buck, of the firm of Buck & Clark, and to Geo. R. Birchett, at Vicksburg, Miss.

J. L. LAKE, Jr., *U. S. M.*
By E. PLATT, *Dep. U. S. M.*

Sworn to and subscribed before me this 25th February, 1875.

LAZ. LINDSEY,
U. S. Com., at Vicksburg, Miss.

[SEAL.]

In this court it is the *general practice* to hear any motions, &c., in cases, only after the commencement of the term to which the writ of error is returnable or the appeal is taken; but the court will vary this in its discretion.

Railroad Co. *vs.* Harris, 7 Wall., 574.
Railroad Co. *vs.* Bradley, *id.* 575.
Slaughter-House Cases, 10 Wall., 274.

The motions for supersedeas in the first case was made long before the return day of the writ of error. That motion was denied, but upon examination of the record it appearing that the writ was ineffectual, the court, on its own motion, dismissed the case.

In the other cases the motion for a supersedeas was entertained and allowed long before the return day of the writ.

In the New Orleans famous Slaughter-House Cases, (10 Wall., 273,) where similar motions were made before the return day of the writs, that objection was made by counsel and argued. (See p. 284.) On page 292 the court says:

"Objection is made, however, that the motions before the court are premature, as the return day of the writ of error is the first day of the next term, but we are of the opinion that the court possesses the power to grant a remedy in such a case even before the return day of the writ of error, where it appears that the court to which it was addressed has made return to the same, and that the plaintiff has filed in the clerk's office a copy of the record duly certified as required by law.

"Except in a case of urgent necessity the court, in the exercise of a proper discretion, might well decline to exercise the power before the return day of the writ, but the better opinion, we think, is that the jurisdiction for such a purpose attaches from the time the party in whose favor the writ of error is granted has complied with all the conditions prescribed in the act of Congress to make the writ of error operate as a supersedeas and stay of execution."

Brown *vs.* Wiley, 4 Wall., 165.

Is the Decree Appealable?

This court has decided that an appeal does not lie from an interlocutory decree dissolving an injunction.

Young *vs.* Grundy, 6 Cr., 51.

Or, refusing an injunction.

Gibbons *vs.* Ogden, 6 Wheat., 448.

United States *vs.* Clarke, 9 Peters, 167.

A decree in equity is not final against complainant where bill is not dismissed. (McCollum *vs.* Eger, 2 How., 61; S. P. Verden *vs.* Coleman, 18 How., 86.) The court says:

"This court has repeatedly decided that a decree upon a motion to dissolve an injunction in the course of a chancery case, and where the bill is not finally disposed of, is not final, and cannot be re-examined in this court," &c.

Directing money to be paid into court or paid out is not an order or decree from which a party can appeal.

Forgay *vs.* Conrad, 6 How., 204 and 205.

Perkins *vs.* Tourniquet, *id.*, 206.

The cases cited and reviewed in Beebe *vs.* Russell, 19 How., 283.

In Thompson *vs.* Dean, 7 Wall., 342, it is held that no decree is final which does not dispose of the whole case. Railroad *vs.* Bradley, 7 Wall., 577; Stovall *vs.* Bank, 10 Wall., 583; Wells *vs.* McGregor, 13 Wall., 188; Ins. Co. *vs.* Barton, 13 Wall., 603.

From an order of the highest court of a State dissolving an injunction no appeal lies.

Moses *vs.* The Mayor, 15 Wall., 387.

No appeal lies as of a "final judgment," or as of a "final decree," which does not end the litigation.

St. Clair Co. *vs.* Lovingston, 18 Wall., 628.

S. P. Moore *vs.* Robbins, 588.

These authorities show, in a very clear and satisfactory light, the propositions we seek to maintain.

1st. That the power of this court has attached, the appeal having been perfected, and the record in its possession.

2d. That the record shows clearly that there was no "final decree," which ends the case, rendered in the court below, and therefore there is no jurisdiction in this court.

3d. That the appeal, being ineffectual on its face to have the case reviewed in this court, it should be dismissed, so that the cause may be proceeded with in the court below, to final trial and decree.

Respectfully submitted,

JOS. CASEY,
Attorney for Appellees.

Supreme Court of United States.

IN EQUITY.

BENJAMIN R. THOMAS
AND
BETTIE B. WILLIS,
Appellants.
vs.
SAMUEL L. WOOLDRIDGE,
EDMUND WOOLDRIDGE,
AND OTHERS,
Defendants.

Appeal from the Circuit Court of the United States for the Southern District of Miss.

ON MOTION TO DISMISS THE APPEAL.

This motion is made by the appellees, or two of them, to dismiss the appeal from the judgment of court below, and the sole ground assigned is, that there was no such final judgment in that court as to sanction an appeal here.

1st. Will the court, under the intimation contained in *ex parte* Russel, 13 Wallace, 671, entertain this motion at all before the return day of the record? If so, is service of a copy of the motion, unaccompanied by any brief or argument upon the Attorney of Record in the Circuit Court, sufficient notice under 6th rule and amendments thereto made December term, 1871.

Phillips Prac., p. 171, 2d Ed.

2. The notice served on complainants below was, that this motion is to be heard on Monday, March 22d, 1875,

is a non-resident and Wooldridge is a non-resident. The attachment clause of the act of 1872 can only apply in favor of resident plaintiffs against non-resident defendants, having property in this State. Any other construction would make it conflict with the constitutional provisions as to jurisdiction.

3. Thomas and Willis could not have filed a bill of interpleader v. Hedrick and the Wooldridges in the Federal Court, because Hedrick does not claim the fund, but only the right to subject it to a demand yet to be judicially established. If they had attempted to do so in the State Court they would have encountered the difficulty of interfering with the process of a Federal Court as well as the one above referred to.

4. Hedrick is seeking his rights in the only forum in which he can be heard; the complainant's rights are imperilled and they come into the only forum which can protect them.

5. To withdraw the fund from the jurisdiction of the State Court, is to practically deny the *legal* right of that court to subject it, and the *legal* right of Hedrick to pursue it, and to remit him to the *comity* of a court in which he can have no legal standing and no means of protection if error should be committed against him.

6. The garnishment in the State Court creates no real *conflict of jurisdiction*. The State Court is not attempting to adjudicate any question made in the Federal Court or that can possibly arise there *in the proceedings there existent*. It does not attempt to *interfere* with the power, authority or proceedings of that court, upon any idea of error in formality, want of jurisdiction, &c.; but *recognizing the validity of everything done there, and the full force and effect of every right acquired there*, sets up nothing in avoidance or opposition, but simply attempts to take for the benefit

of his creditors, the *fruits* which a litigant has secured in that court. Suppose, instead of a debt, the plaintiff had recovered personal property by an action in *detinue* or land by ejectment; surely it cannot be said it would create a conflict of jurisdiction for the State Court to levy an attachment upon these, before actual execution of the Federal process by delivery of the property to the plaintiff.

7th. A denial of the relief sought by complainants in this Court would bring about a conflict of jurisdiction in which they, though mere stake-holders, may be seriously embarrassed; and if their legal rights are not clear it yet seems that the injunction should be maintained out of comity to the State Court, and as furnishing the simplest and surest means to the protection of all parties.

8th. Wooldridge can, by giving bond in the State Court, relieve the debt from the operation of the garnishment, and this is their proper remedy.

Revised Code of Miss., §1440.

We insist that the rights of the creditor, Hedrick, shown to be involved in the controversy, should receive some consideration from this Court, though he is only incidentally before it. It is reasonable to infer that he sought to enforce his claim against the Woolridges by attachment under the State laws, as the only safe mode of proceeding to that end, and that he did not sue in Kentucky, as suggested by Wooldridge in his answer, because the prospect of getting his money there was not so good. If this motion is sustained, and payment made of the fund attached over to Wooldridge, by process in the hands of the U. S. Marshall, Hedrick may get a judgment in the State Court, to be held the ensuing month, but find nothing to satisfy it from.

The interval before the State Court, will finally deter-

mine whether Wooldridge is debtor of Hedrick is short, and we do not see any urgent necessity for indulging the wish of the former, pressed in this rather unusal way, to have the hand of the law withdrawn from the fund in the hands of these garnishees, and his own substituted in its stead. A. B. Pittman

~~W. M. HARRIS~~,

Contra Motion.